

REMARKS

Reconsideration of the application is respectfully requested in view of the following remarks.

DISCUSSION

The subject matter of each of the pending claims stand rejected over a single reference, US Patent 6,978,220 to Wilson ("the 220 patent"), under 35 USC §102(e). The reference is commonly assigned to the assignee of the present application. MPEP § 804.03 provides that: (1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (c), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. Since all the inventors were employees of the assignee with contractual duty to assign patent rights to assignee, applicant respectfully asserts that MPEP § 804.03 applies and that the 35 USC § 102(e) basis for rejection be removed as improper.

In addition, applicant cites to MPEP § 715.01(b) "Reference and Application Have Common Assignee." This MPEP provision states in pertinent part that, "Where, however, a rejection is applied under 35 U.S.C. 102(f)/103 or 35 U.S.C. 102(g)/ 103, or, in an application filed *on or after November 29, 1999, under 35 U.S.C. § 102(e)/ 103 using the reference, a showing that the invention was commonly owned, or subject to an obligation of assignment to the same person, at the time the later invention was made would preclude such a rejection or be sufficient to overcome such a rejection.* See MPEP § 706.02(I) and § 706.02(I)(1). (Italics emphasis added)

The present application is assigned as of record at Reel 015100 Frame 0902, while the 220 patent is assigned as of record at Reel 015048 Frame 0703 to the common assignee. The assignments, as recorded, recite the pre-existing obligations of the inventive entities to assign to the common assignee.

Applicant respectfully requests reconsideration in view of the foregoing citations from the MPEP and the common ownership evidenced in the Assignment records. If the Examiner requires further proof of common ownership, he is respectfully requested to contact the undersigned.

CONCLUSION

In conclusion, for the reasons given above, all claims now presently in the application are believed allowable and such allowance is respectfully requested. Should the Examiner have any questions or wish to further discuss this application, Applicants request that the Examiner contact the undersigned attorney at (480) 385-5060.

If for some reason Applicants have not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent abandonment on this application, please consider this as a request for an extension for the required time period and/or authorization to charge Deposit Account No. 50-2091 for any fee which may be due.

Respectfully submitted,

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Dated: December 21, 2006

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